IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION ST.NO.17605 of 2004
IN
FIRST APPEAL NO.706 OF 2004

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders.

Shri P.O.Verghese for the Appellants.

Shri Karlekar for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 1st September, 2004.

P.C.:

1. The Appellants have filed Civil Application praying for grant of leave under Order XXXII Rule 7 of the Code of Civil Procedure, 1908, for recording compromise in terms of the consent terms which are tendered on record today.

2. The Appellant No.1 is the original Defendant in a Suit filed by the Respondent. The Appellant No.1 is the widow of late Dr.Ashwin Naik, who expired in the year 1991. The Respondents are the parents of the deceased husband of the Appellant No.1. The Appellant No.2 is the minor son of the Appellant No.1.

3. The dispute is about the residential flat in a Cooperative Housing Society. The case of the

Respondents as made out in the plaint is that they are the owners of the suit flat and the Appellant No.1 has no right to occupy the suit flat. The Appellate Court has passed a decree directing the Appellant no.1 to remove herself along with the Appellant No.2 from the suit flat on or before 15th July 2004. The said Decree is not enforced till today.

4. From the Judgment of the trial Court it is obvious that there is a dispute between the Appellant No.1 and the Respondents and therefore, they cannot peacefully reside together in the suit flat.

5. I have perused the consent terms placed on record which are signed by the Appellant No.1, Respondent No.1 and the Advocate for the Appellants as well as the Advocate for Respondent No.1. Respondent No.2 has expired. The proposed compromise is that the Respondent No.1 will pay to the Appellants a sum of Rs.4,00,000/- in full and final satisfaction of the claim of the Appellants. The Respondent No.1 has agreed to deposit the said sum of Rs.4,00,000/- with the Registrar of this Court within a period of four months from the date of receipt of the certified copy of the Consent Terms. The Consent Terms further record the undertaking given by the Appellants to vacate the

suit flat on or before 30th April 2005. The Consent Terms further provide that in the event of the Respondent No.1 not depositing the said amount of Rs.4,00,000/- within the stipulated time, the undertaking of the Appellants will not operate and the Judgment and Decree dated 18th March 2004 passed by the trial Court will stand set aside.

6. After having considered findings recorded by the trial Court and the nature of the right pleaded by the Appellant No.1, I am satisfied that the compromise proposed to be entered into in terms of the consent terms is in the interests of the Appellant No.2 who is a minor. The learned Counsel appearing for the Appellants on instructions of the Appellant no.1 who is present in the Court states that the said sum of Rs.4,00,000/- if deposited by the Respondent No.1 in this Court, will be utilised for the purpose of acquiring a residential accommodation for herself and for the benefit of the Appellant No.2.

7. It is therefore clear that the proposed compromise is in the interests of the Appellant No.2. Therefore, leave deserves to be granted as prayed for. According the Civil Application is allowed.

Judge.